IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.2949 OF 2004

Shri.Ramesh Shivling Andhalkar ..Petitioner

Vs.

Bank of India and Ors. ..Respondents

....

Mr.R.V.More for petitioner
Mr.N.S.Fadia for Respondent no.1
Mr.Umesh Mankapure for Respondent no.2

....

CORAM : B.H.MARLAPALLE,J.
DATE : MARCH 22,2005

P.C.:

1. Heard Mr.More, the learned counsel for the petitioner who was a borrower of the respondent no.1 Bank for an amount of Rs.1,78,000/- or so for the purchase of a goods transport vehicle (Tempo). Between the period from 15.3.1991 to 23.3.1993 he had repaid an amount of Rs.85,915/- but thereafter he became a defaulter. The Bank therefore, instituted recovery proceedings by filing Special Civil Suit No. 520 of 1996 in the Court of learned Civil Judge S.D. at Sangli. The issues were framed at Exh.25 on 9.9.2002. The amount of recovery claimed in the suit was Rs.2,49,065/- with interest at the rate of 14% per annum from the date of the suit. The present

petitioner was defendant no.1 and he had claimed that the vehicle was sold by him to one Mr.Kishan Rauba Malve. The defendant no.1 moved an application at Exh. 43 on or about 13.2.2003 praying for impleading the said Mr.Malve as an additional defendant. This application was rejected by the impugned order dated 12.8.2003.

2. Admittedly, the subject vehicle was hypothecated to the Bank and the Bank was not a party to the transaction between the present petitioner and Mr.Malve. In addition, the vehicle was never transferred in the name of Mr.Malve and obviously even the Insurance policy of the vehicle could have been drawn from time to time in the name of the present petitioner only. Mr.More placed reliance on the provisions of Rule 23 of Order VIII of the C.P.C. and submitted that the application at Exh.43 ought to have been allowed by the trial Court especially when some of the instalments upto the date when the vehicle was sold to Mr.Malve, were accepted by the bank when the remittance was by Mr.Malve itself. Remittances made in the loan account of the petitioner would not be a reason to hold that Mr.Malve was a necessary party so long as the vehicle was not transferred in his name and if he was remitting the loan amount, it could be at the most as an agent of the present petitioner.

3. The view taken by the trial Court in rejecting the belated application, does not suffer from any errors apparent on the face of the record and therefore, this petition fails and the same is rejected summarily. It is clarified that this order will not come in the way of the petitioner to take out appropriate proceedings against Mr.Malve.

[B.H.MARLAPALLE,J.]